

21 C.J.S. Courts § 108

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Courts

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III. Creation and Constitution; Officers of Courts

A. Creation, Organization, and Abolition of Courts

1. In General

§ 108. General and specific rules

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  41, 42(1), 43

Except insofar as authorized by the constitution, the legislature cannot abolish, divide, reorganize, or consolidate constitutional courts, nor alter or diminish the essentials of the jurisdiction, functions, or judicial powers conferred on such courts.

It is a universally recognized rule that, except insofar as it is authorized to do so by the constitution, the legislature cannot abolish, reorganize, divide, or consolidate constitutional courts, nor alter, destroy, increase, or diminish the essentials of the jurisdiction, functions, or judicial powers so conferred on them,¹ nor abrogate or abridge their inherent powers or functions.²

In other words, the legislature cannot take from courts power which it does not give.³ Thus, the legislature cannot destroy jurisdiction by depriving a party of the right to appeal to the courts for redress of a legal wrong,⁴ nor can it authorize a court to divest itself of constitutionally imposed exclusive jurisdiction.⁵ However, a change of the substantive law by the legislature, which increases or decreases the subject matter on which the jurisdiction of the courts operates, is not an unconstitutional interference with such jurisdiction.⁶

On the other hand, to the extent that the constitution allows or does not prohibit, the legislature may legislate with respect to constitutional courts.⁷ Thus, depending on the particular constitutional provisions involved, the legislature may establish their jurisdiction,⁸ increase, diminish, or change their jurisdiction;⁹ confer on them any additional jurisdiction that it deems advisable;¹⁰ may extend their jurisdiction in harmony with their character and general jurisdiction, without infringing on the

inherent or constitutional powers of any other court,¹¹ or may abridge their jurisdiction without infringing on their inherent powers.¹²

Similarly, the legislature may regulate to some extent the quantity of the business of a court by reasonably contracting or enlarging the limits of the exercise of its jurisdiction¹³ or may, pursuant to authority granted by the constitution, enact a statute which incidentally results in the elimination of a constitutional court.¹⁴ Further, to the extent that the legislature properly confers additional jurisdiction on a constitutional court, it may withdraw such jurisdiction.¹⁵

Conferring judicial powers on other than courts.

Unless the constitution otherwise provides, judicial power is to be vested exclusively in the courts.¹⁶ The legislature has no authority to confer such power on any person or class of persons other than the courts¹⁷ or judicial offices¹⁸ provided for in the constitution. However, statutes which confer on nonjudicial persons or bodies functions which are not judicial are not unconstitutional on this ground.¹⁹

Regulation.

The legislature always has power, within constitutional limitations, to regulate the exercise of jurisdiction conferred by the constitution.²⁰ The legislature may prescribe new conditions under which that jurisdiction may be exercised,²¹ and designate parties who may²² or may not²³ invoke the established jurisdiction of the court over certain matters, provided such regulation or restriction does not defeat or materially impair constitutional jurisdiction or functions.²⁴ The legislature may, of course, do so where the constitution expressly so provides.²⁵

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Footnotes

- 1 Neb.—*In re Claims Against Pierce Elevator*, 291 Neb. 798, 868 N.W.2d 781, 87 U.C.C. Rep. Serv. 2d 745 (2015).

Nev.—*Halverson v. Hardcastle*, 123 Nev. 245, 163 P.3d 428 (2007).

Or.—*Charleen J. v. Blake O.*, 289 Neb. 454, 855 N.W.2d 587 (2014).

Wash.—*Buecking v. Buecking*, 179 Wash. 2d 438, 316 P.3d 999 (2013), cert. denied, 135 S. Ct. 181, 190 L. Ed. 2d 129 (2014).
- 2 Miss.—*Ex parte Marshall*, 165 Miss. 523, 147 So. 791 (1933).

Tex.—*State v. Gillette's Estate*, 10 S.W.2d 984 (Tex. Comm'n App. 1928).
- 3 Cal.—*In re Cate*, 273 P. 617 (Cal. App. 2d Dist. 1928).
- 4 Cal.—*Selby v. Oakdale Irr. Dist.*, 140 Cal. App. 171, 35 P.2d 125 (3d Dist. 1934).
- 5 Colo.—*In re Brown's Estate*, 65 Colo. 341, 176 P. 477 (1918).
- 6 Wis.—*American Furniture Co. v. I. B. of T. C. and H. of A., Chauffeurs, Teamsters and Helpers General Local No. 200 of Milwaukee*, 222 Wis. 338, 268 N.W. 250, 106 A.L.R. 335 (1936).

- 7 Okla.—Chickasha Cotton Oil Co. v. Grady County, 1936 OK 318, 177 Okla. 240, 58 P.2d 590 (1936).
- Pa.—Penn Anthracite Mining Co. v. Anthracite Miners of Pa., 318 Pa. 401, 178 A. 291 (1935).
- 8 Mich.—Matter of Butterfield, 100 Mich. App. 657, 300 N.W.2d 359 (1980).
- 9 Ala.—Kirby v. State, 899 So. 2d 968 (Ala. 2004).
- Tex.—Kubish v. State, 128 Tex. Crim. 666, 84 S.W.2d 480 (1935).
- 10 Ill.—People ex rel. Rusch v. White, 334 Ill. 465, 166 N.E. 100, 64 A.L.R. 1006 (1929).
- 11 Ark.—Rodgers v. Carson Lake Road Imp. Dist. No. 6, 191 Ark. 112, 85 S.W.2d 716 (1935).
- Fla.—State v. Jefferson, 758 So. 2d 661 (Fla. 2000).
- 12 Ill.—Brown v. Kienstra, 337 Ill. 641, 169 N.E. 736 (1929).
- Tex.—Seale v. McCallum, 116 Tex. 662, 287 S.W. 45 (1926).
- 13 Colo.—People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).
- 14 Ga.—Hines v. Etheridge, 173 Ga. 870, 162 S.E. 113 (1931).
- 15 Tex.—Texas Farm Bureau Cotton Ass'n v. Lennox, 296 S.W. 325 (Tex. Civ. App. Texarkana 1927).
- 16 Md.—Day v. State, 162 Md. 221, 159 A. 602 (1932).
- 17 N.D.—Becker County Sand & Gravel Co. v. Wosick, 62 N.D. 740, 245 N.W. 454 (1932).
- 18 Md.—Day v. State, 162 Md. 221, 159 A. 602 (1932).
- 19 Idaho—In re Edwards, 45 Idaho 676, 266 P. 665 (1928).
- Ky.—Perkins v. Lucas, 197 Ky. 1, 246 S.W. 150 (1922).
- 20 Ark.—Dickinson v. Mingea, 191 Ark. 946, 88 S.W.2d 807 (1935).
- Wis.—John F. Jelke Co. v. Hill, 208 Wis. 650, 242 N.W. 576 (1932).
- 21 Cal.—In re Alpine, 203 Cal. 731, 265 P. 947, 58 A.L.R. 1500 (1928).
- 22 Fla.—State ex rel. Jacksonville Gas Co. v. Lewis, 125 Fla. 816, 170 So. 306 (1936).
- 23 Cal.—Yolo Water & Power Co. v. Superior Court in and for Lake County, 43 Cal. App. 332, 185 P. 195 (3d Dist. 1919).
- 24 Cal.—Millholen v. Riley, 211 Cal. 29, 293 P. 69 (1930).
- Wis.—John F. Jelke Co. v. Hill, 208 Wis. 650, 242 N.W. 576 (1932).
- 25 Ky.—Federal Land Bank of Louisville, Ky. v. Crombie, 258 Ky. 383, 80 S.W.2d 39 (1935).
- Ohio—Daily v. Dowty, 52 Ohio App. 84, 6 Ohio Op. 180, 21 Ohio L. Abs. 338, 3 N.E.2d 430 (9th Dist. Wayne County 1936).